No. 154.

Supreme Court of the United States

October Term, 1943.

ANDERSON NATIONAL BANK, - - Appellant,

versus

H. CLYDE REEVES, Commissioner of Revenue, *et al.*, - - - - - - - - Appellees.

Appeal from the Court of Appeals of the State of Kentucky.

BRIEF IN BEHALF OF ANDERSON NATIONAL BANK

I. A State Statute is void as interfering with a Federal Instrumentality where it compels National Banks,

(1) To pay over to the State all National Bank deposits which the Statute defines "shall be presumed abandoned";

(2) To publish as a public record the names, addresses, and amounts of deposits, of all National Bank depositors where such deposits fall within the Statute's definition of deposits that "shall be presumed abandoned."

II. The Statute deprives both State and National Banks of their property without "due process of law."

III. This Court should *not* overrule *First Nat'l Bank v. California*, 262 U. S. 366.

WM. MARSHALL BULLITT,
Counsel for Appellant.

BULLITT & MIDDLETON,
Of Counsel.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

INDEX.

LIST OF AUTHORITIES.

STATUTES.

MISCELLANEOUS.

[References Required by Rules 12 and 27]

Opinions Below: *Anderson National Bank* v. *H. Clyde Reeves, Commissioner of Revenue,* 293 Ky. 735; R. 53-64; s. c. 294 Ky. 674; R. 89-90.

Jurisdictional Authority: Judicial Code §237a, as amended by Act of February 13, 1925, U. S. C. A. §344(a). Probable jurisdiction noted October 11, 1943 (R. 98).

Statutes Involved: Kentucky Revised Statutes [1942], Chapter 393 entitled "Escheats," §§393.060; 393.110; 393.130 (See Appendix, p. 45, *infra*).

Date of Judgment, etc. June 4, 1943 (R. 87-88); Affirmed June 15, 1943 (R. 89).

Nature of Case, etc. A 1940 Kentucky Act required all *National* Banks annually (1) to report *publicly* and (2) *to pay over*, to the Department of Revenue, *all moneys on deposit* in such *National* Banks, where the depositors—during the preceding 10 years [in the case of *demand* deposits], or during the preceding 25 years [in the case of all other deposits, *i. e.*, savings, time, certificates, etc.]—had not done anything with the deposit (K. R. S. 393.060, 393.130 (See Appendix, p. 45, *infra*).

Anderson National Bank sued the Commissioner of Revenue, *et al.*, to enjoin them from requiring *National* Banks to make the report, or to pay over such deposits, to the Department of Revenue (R. 2-15).

The Trial Court held part of the Act unconstitutional; and enjoined the State Officials from requiring any Banks to pay over the deposits, without first obtaining a judgment of a court of competent jurisdiction (R. 45-46).

On appeal and cross-appeal, the judgment was *reversed;* and the entire Act was *sustained* (*Anderson Nat. Bank* v. *H. Clyde Reeves*, 293 Ky. 735; R. 53-64). A new judgment was entered below, dismissing the petition (R. 87-88); which on a second appeal was affirmed (*Anderson Nat. Bank* v. *Reeves*, 294 Ky. 674; R. 89-90)—to review which this appeal was taken (R. 94-96). The same facts, and relief prayed, exist as to *State* Banks.

Supreme Court of the United States

October Term, 1943.

No. 154.

ANDERSON NATIONAL BANK, - - - - - *Appellant,*

v.

H. CLYDE REEVES, Commissioner of Revenue, *et al.*, - - - - - - - - - *Appellees.*

Appeal from the Court of Appeals of the State of Kentucky.

BRIEF IN BEHALF OF ANDERSON NATIONAL BANK.

The only questions involved are:

(1) Is *First National Bank* v. *California*, 262 U. S. 366 [called *San Jose* case], still the law? Or, will this Court now *overrule* it!?—as California, Minnesota, Wisconsin, Kentucky and Michigan urge it to do.

(2) Can a State compel a *National* Bank annually (*a*) to *report publicly* the names, addresses and amounts of deposit of all depositors, and (*b*) *to pay over* to the State's Department of Revenue all those deposits in the Bank, where (*c*) demand deposits have been "dormant" for ten years, and savings and time deposits have been "dormant" for twenty-five years?

(3) Does the Act (KRS, §393.110) deprive both State and National Banks of their property "without due process of law"?

---

[1]In 1940, the Kentucky Legislature *expressly repealed* all prior escheat legislation, to-wit: Ky. Stat. §§1610-1623 (1936 Ed.) and Acts 1938 ch. 165 known as Ky. Stat. §1609-(1-9). It then

[*Note continued on following page*]

RELEVANT STATUTES.

[Kentucky Revised Statutes 1942; Baldwin's 1943 Revision Annotated]

The relevant Kentucky Statutes are set out in full in the Appendix (p. 45, *infra*); but for convenient reference the only statutes really pertinent on this appeal are summarized as follows:

Kentucky Revised Statutes.

"393.060 [1610] Deposits in Bank or Trust Company Payable on Demand; When Presumed Abandoned.

Any deposit (legal, beneficial, equitable or otherwise) payable on demand in any bank or trust company in this state, together with the interest thereon **shall be presumed abandoned** unless the owner has, within ten successive years next preceding the date as of which reports are required by KRS 393.110:

(1) Negotiated in writing with the bank or trust company concerning it;

(2) Been credited with interest on the passbook or certificate of deposit on his request;

---

adopted a completely new "Escheat" Act [Act of March 1, 1940; Acts 1940 ch. 79; p. 333-349; §8 of which was later amended by Act of March 11, 1942, Acts 1942 ch. 156, p. 637-639], which was *temporarily* known as Ky. Stat. §§1605a; 1609-1622-1 [Baldwin's Kentucky Statutes Service; May, 1940, Number, p. 108-114] and was so referred to in the pleadings and in original trial below (R. 2-46).

In 1942 (during the first appeal), there was a complete official revision of Kentucky statutory law, effective October 1, 1942, known as "Kentucky Revised Statutes 1942" and cited as K.R.S., which was a re-writing and re-grouping of the former Carroll's Kentucky Statutes (1936 Ed.) and of Baldwin's 1938, 1940, 1941 Supplements thereto. Consequently, all citations in the opinions of the Court of Appeals [R. 53-64, 89-90] and in the proceedings subsequent to October 1, 1942 [R. 64-95] are to K.R.S.

"Baldwin's Kentucky Revised Statutes, Annotated," 1943 Revision, is the most convenient publication thereof, and all K.R.S. references in this Brief are made thereto.

(3) Had a transfer, disposition of interest or other transaction noted of record in the books or records of the bank or trust company; or

(4) Increased or decreased the amount of the deposit."

393.070 is the same as 393.060, *supra*, except that as to other than demand deposits (*i. e.*, savings accounts, time deposits, certificates of deposit, etc.) the time is 25 years, instead of 10 years.

"393.110 [1611] Holders of Abandoned Property to Report to Department; Posting of Notices; Duty to Surrender Property to Department; Rights of Action.

(1) It shall be **the duty of all state and National banks,** trust companies, or other persons, and courts of this Commonwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver, or in any other capacity coming within the purview of Section 7 of this Act [KRS 393.010(2); 393.060 to 393.100] **to report annually** to the Department as of July 1, **all property held by them declared by this Act to be presumed abandoned.** The report shall be filed in the offices of the Department on or before September 1 of each year for the preceding July 1, and shall give the **name of the owner, his last known address, the amount and kind of property,** and such other information as the Department may require for the administration of this Act. The report shall be made in duplicate; the original shall be retained by the Department, and the copy shall be mailed to the sheriff of the county where the property is located or held. It shall be the duty of the sheriff **to post said copy on the courthouse door or the courthouse bulletin board.** The sheriff shall immediately certify in writing to the Department the date when said copy was posted. Said copy must be posted on or before October 1, of the year when it is made, and shall be constructive notice to all interested parties.

and shall be in addition to any other notice provided by statute or existing as a matter of law.

(2) **Any person** who has made a report of any estate or property **presumed abandoned**, as required by this Act, **shall**, between November 1 and November 15 of each year, **turn over to the Department all property so reported**; but if the person making the report or the owner of the property shall certify to the Department by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist, or shall certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then, the person reporting or holding the property shall not be required to turn the property over to the Department except on order of court. No person shall be required to surrender any property on a presumption of abandonment to the Department if the period of time provided by any statute of limitation applicable to the owner's rights as against the holder has expired unless the court orders him to do so. If a person files an action in court claiming any property which has been reported under the provisions of this Act, the person reporting or holding such property shall be under no duty while any such action is pending to turn the property over to the Department, but shall have the duty of notifying the Department of the pendency of such action.

(3) The person reporting or holding the property or any claimant thereof shall always have the right to a judicial determination of his rights under this Act, and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not and may include in one petition all such property within the jurisdiction of the court in which the action is brought provided the property of different persons is set out in separate paragraphs" [393.110 as amended by Act March 11, 1942; Acts 1942, ch. 156, p. 637-639].

"393.130 [1613] Transferor to Department Relieved of Liability.

Any person who transfers to the department property to which the state is entitled under this chapter shall be relieved of any liability to the owner arising from that transfer. The state shall reimburse any person who cannot be relieved of such liability by this section for all liability to the owner of the property or estate or damage incurred by reason of compliance with this chapter."

393.230. (1) If a National Bank *refuses* to pay over the deposits to the Department of Revenue as provided in K. R. S. 393.110, *supra*, the Commissioner of Revenue may bring an equitable proceeding "to force payment" (Appendix, p. 45, *infra*).

(2) After a National Bank has paid over a deposit to the Department of Revenue on *presumption* of abandonment under K. R. S. 393.110(2), the Commissioner may "institute proceedings to establish *conclusively* that it was *actually* abandoned or that the owner has died and there is no person entitled to it" (Appendix, p. 45, *infra*).

393.290 and 393.990 provide penalties of fine or imprisonment, or both, for a National Bank refusing to make the report or to pay over the deposit as required by K. R. S. 393.110, *supra*.

A Bank's attack upon the constitutionality of a Statute, as applied to itself, cannot *ordinarily* be bolstered up by the Statute's alleged unconstitutionality as applied to the depositors;[2] but there is an exception to that rule (*Provident Savings Institution* v. *Malone*, 221 U. S. at p. 663;

[2] *Hatch* v. *Reardon*, 204 U. S. 152, 160; *Lee* v. *State of New Jersey*, 207 U. S. 67, 70; *Citizens Nat'l Bank* v. *Kentucky*, 217 U. S. 443, 453; *Provident Savings Institution* v. *Malone*, 221 U. S. 660, 665; *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 289; *Heald* v. *District of Columbia*, 259 U. S. 114, 123; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 42; *Oliver Iron Co.* v. *Lord, Id.* 172, 180; *Massachusetts* v. *Mellon, Id.* 447, 488; *Aetna Ins. Co.* v. *Hyde*, 275 U. S. 440, 446; *Utah Power & L. Co.* v. *Pfost*, 286 U. S. 165, 186; *Premier-Pabst Co.* v. *Grosscup*, 298 U. S. 226, 227; *Virginian Ry.* v. *Federation*, 200 U. S.

[*Note continued on following page*]

Security Bank v. *California*, 263 U. S. at p. 290; p. 35, *infra*); and the principal provisions of the Statute applicable to the *depositor* are briefly summarized in the margin.[3]

STATEMENT OF FACTS.

1. *Nature of the case.* Anderson National Bank, [of Kentucky] sued Mr. Reeves, Commissioner of Revenue, the Kentucky Tax Commission, and the Attorney General, in the State Court, to enjoin them *inter alia* (R. 2, 14-15):

(1) From requiring all *National* Banks annually to *pay over* to the Department of Revenue *all deposits*, which K. R. S. 393.060 and 393.070 defined "shall be *pre-*

515, 558; *Voeller* v. *Neilston Co.*, 311 U. S. 531, 537; *Cf. Cumberland Pipe Co.* v. *Comm.*, 228 Ky. 453, 467; *Comm.* v. *Kentucky Jockey Club*, 238 U. S. 739, 759; *Stein* v. *Kentucky State Tax Com.*, 266 Ky. 469, 473; *Burrow, Com'r* v. *Kapfhammer*, 284 Ky. 753, 757; 16 C. J. S. "Constitutional Law" §76, notes 47, 48, 51, 52, 54-58; 16 Fed. Digest (1940) "Constitutional Law" §42, and cases there digested.

[3] 393.140(2)(3). After a National Bank has paid over a deposit to the Department of Revenue in accordance with K.R.S. 393.110(2), the depositor may file his claim to the deposit, *unless* it has already been adjudged under K.R.S. 393.230(2) to have been "*actually* abandoned."

The depositor must, within fifteen days after filing his claim, publish notice thereof in a newspaper of general circulation in the county where the deposit was held; or, if there is no such newspaper, the depositor shall post notice of his claim at the court house door and in three other conspicuous places, and file proof thereof with the Department of Revenue (Appendix, p. 45, *infra*).

393.150. The Commissioner "shall consider" the claim; and if established the Commissioner shall "authorize payment to him of a sum equal to the amount paid into the State Treasury" (Appendix, p. 45, *infra*).

393.160. If dissatisfied with the Commissioner's decision, the depositor may "within sixty days" appeal to the Franklin Circuit Court, or file an independent action in that Court to vacate the Commissioner's decision; with a right to appeal to the Court of Appeals "within sixty days after the judgment" (Appendix, p. 45, *infra*).

There is no provision for compelling the State, the Department of Revenue, or any other agency of the State, to pay the depositor, even if the Commissioner finds that the deposit was *not* actually abandoned.

sumed abandoned" after 10 years or 25 years as the case might be; and

(2) From requiring all *National* Banks annually to report to the Department of Revenue (i) the names and addresses of all their depositors and (ii) the several amounts of each deposit—which, fall within the K. R. S.'s definition of "*presumed* abandoned" deposits.

The same relief was sought for State Banks.

The lower court granted a very *limited* injunction, by which it only enjoined the defendants from requiring the Banks *to pay over* the deposits,

> "without first obtaining an order or judgment of a court of competent jurisdiction requiring the delivery of such property" (R. 45-46).[4]

2. *Court of Appeals' decision.* In *Anderson Nat. Bank v. Reeves*, 293 Ky. 735, 744-747, the Court of Appeals (on appeal and cross appeal) held that the entire Kentucky "Escheat" Act was constitutional; and, so far as *National* Banks were concerned (R. 61-64),

(1) That the Escheat Act [K. R. S. 393.110, p. 3-4, *supra*] did not really declare an escheat at all; but that it only operated in such a way that:

> "mere *custody*, as distinguished from *title*, is vested in the state by reason of dormancy and . . . [has no] tendency to cause depositors to hesitate to make deposits in national banks" (p. 746; R. 63);

(2) That *First Nat'l Bank* [*of San Jose*] v. *California*, 262 U. S. 366 (sometimes called the *San Jose* Case)

[4] On the ground that K.R.S. 393.110 was unconstitutional insofar; *but only insofar*, as [1] it required the deposits to be paid over to the Department of Revenue "without an order or judgment of a court of competent jurisdiction"; and [2] the posting of the report on the Court House door "shall be *constructive notice* to all interested parties"; and that the provisions for enforcing [1] were consequently unconstitutional (Judgment May 8, 1942. R. 45-46).

was not in point, for the alleged reason (R. 62) that this Court struck down the California Statutes, solely because "they were deemed by the Court [this Court] to be *escheat statutes confiscating the* deposits solely by reason of *dormancy*"; **whereas**, the Kentucky Statutes (applicable to National Banks' deposits) were *not* "escheat statutes" at all, but merely *transferred the custody* of the deposits from the National Banks to the State (p. 746; R. 63);

(3) That Kentucky would not follow *American National Bank* v. *Clarke, Supt. of Banks*, 175 Tenn. 480, or *Starr* v. *O'Connor*, 118 F. (2d) 548 (C. C. A. 6th), which held similar Tennessee and Michigan Statutes invalid as to *National* banks, for the alleged reason that the Kentucky Court of Appeals did not think the Supreme Court of Tennessee and the Circuit Court of Appeals (6th) appreciated the real basis of this Court's decision in the *San Jose* Case (p. 746; R. 63);

(4) That the Kentucky "Escheat" Act was good as to *National* Banks, because

> "Since the Act in controversy does not provide for an escheat of deposits by reason of mere dormancy, as did the California statutes (title being vested in the state only after judicial determination of actual abandonment), and . . . the Act has no tendency to cause depositors to hesitate on account of apprehended fear of confiscation to make deposits in *national* banks. This being true there is no unwarranted interference with such banks and no frustration of the purpose of national legislation concerning them such as to render the Act invalid as to them" (p. 747; R. 63).

The Court of Appeals *affirmed* the judgment on the Bank's original appeal; but *reversed* it on the Commissioner's cross appeal (R. 53).

Upon the return of the case to the lower court, a new judgment was entered which sustained the Escheat Act in

its entirety; especially as applied to National Banks; and dismissed Anderson National Bank's petition (R. 87-88).

3. *Court of Appeals' decision on Second Appeal.* On Second Appeal the new judgment was *affirmed,* upon the ground that there was *no merit* in the Bank's contention (1) that the Escheat Act "conflicts with the National Banking Act"; or (2) "is violative of the due process clause" (R. 89; *Anderson Nat. Bank* v. *Reeves,* 294 Ky. 674)—to review which, the present appeal was taken; and probable jurisdiction has been noted (R. 94, 98).

ASSIGNMENT OF ERRORS.

The Court of Appeals of Kentucky erred in the following particulars:

I. In holding that K. R. S. 393.110 [requiring *National* Banks (under heavy penalty) to voluntarily pay over to the Department of Revenue all deposits on account of inactivity or dormancy] does not violate the National Banking Act [Assignment of Error No. 2; R. 93].

II. In holding that the State of Kentucky can take custody of deposits in *National* Banks on account of inactivity or dormancy [Assignment of Error No. 5; R. 93].

III. In holding that "there is no unwarranted interference with such (*National*) Banks, and no frustration of the purposes of national legislation concerning them such as to render the Act invalid as to them" [Assignment of Error No. 11; R. 94].

IV. In holding that K. R. S. 393.110 does not violate the "due process" clause of the 14th Amendment [Assignment of Error No. 3; R. 93].

SUMMARY OF POINTS DISCUSSED.

I. The Kentucky Court of Appeals carefully construed the Escheat Act [K.R.S. §393.110].

(1) It held that the provisions thereof applicable to National Banks (*a*) did not declare an escheat at all, but (*b*) merely transferred property [*i. e.*, such deposits as the Act declared should be "presumed abandoned"] from the custody of the National Banks, and vested the custody of such deposits (not the title) in the State.

(2) That construction of the Escheat Act is binding upon this Court. (p. 11–13, *infra.*)

II. K.R.S. §393.110 (as so construed) is void, because:

(1) It interferes with the custody, duties, and conduct of National banks; and it regulates and frustrates the national purposes for which National Banks were created.

(2) It trespasses upon the field of Federal instrumentalities; which trespass, if sustained here, opens the door for unlimited State discretionary power over Federal instrumentalities. (p. 13–35, *infra.*)

III. K.R.S. §393.110, if enforced, will deprive both State and National Banks of their property "without due process of law." (p. 35–42, *infra.*)

IV. Response to the various Briefs filed in support of Kentucky's position. (p. 43–44, *infra.*)

FIRST POINT.

The Kentucky Court of Appeals carefully construed the Escheat Act.

1. It held that those provisions[5] applicable to National Banks (*a*) did not declare an escheat at all; but (*b*) merely transferred property [*i. e.*, such deposits as the Act declared should be "presumed abandoned"] from the "custody" of the National Banks; and vested the custody of such deposits (not the title) in the State.

2. That construction of the Escheat Act is binding upon this Court.

The Kentucky Court of Appeals carefully reviewed, summarized, or quoted, every material section of the Escheat Act (R. 53-56). It held that the Act *did not escheat* bank deposits; but merely compelled *National* Banks to *transfer the custody* of those deposits to the custody of the State (R. 58, 63; *Anderson Nat. Bank* v. *Reeves*, 293 Ky. 735, at p. 741, 746, 747). That same argument is urged by Kentucky's Attorney General (BRIEF, p. 49-50) and by Michigan as *amicus curiae* (BRIEF, p. 10-13, 16, 18).

The Kentucky Court of Appeals thus expressed its view that there was *no escheat* of bank deposits; but only a mere transfer of custody, saying (R. 58, 63; 293 Ky. at p. 741, 746-747):

> "But the portions of the Act dealing with dormant bank deposits do not provide for a seizure of the deposits and vesting of title or ownership in the State **but merely for a transfer of the property** which may later be adjudged to be subject to escheat, and **these provisions are for the benefit and protection of both the depositors and the State** . . .
>
> The good faith of the legislature cannot be questioned, and it is to be assumed that **the Act was for the protection of the depositors as well as for the benefit of the State** . . . [After reviewing the

[5] K.R.S. 393.060; 393.070; 393.110; 393.130.

> *San Jose* case] the Act differs from the California statutes in that **no escheat is declared** by reason of mere dormancy—the Act is one pursuant to which **mere custody,** as distinguished from title, **is vested in the State** by reason of dormancy and is not one of confiscation having the tendency to cause depositors to hesitate to make deposits in national banks . . .
>
> Since the Act in controversy **does not provide for an escheat of deposits** by reason of mere dormancy as did the California statutes (title being vested in the State only after judicial determination of *actual* abandonment), . . . it is our opinion that the Act has no tendency to cause depositors to hesitate on account of apprehended fear of confiscation to make deposits in national banks."

By that language, the State Court *construed* the Escheat Act as follows:

> (1) That *it did not escheat* the "dormant" deposits at the end of *ten*, or *twenty-five* years (as the case might be); but
>
> (2) That it simply required *National* Banks [and State Banks also] *to pay to the State* all those deposits which the Act *legislatively* declared to be "presumed abandoned."

The Act, thereby, *substituted* the Kentucky Legislature's judgment regarding *National* Banks' "dormant" deposits, in place of Congress' judgment on that subject (p. 19-20, *infra*).

That State Court *construction* of the Act is binding upon this Court.

In *Minnesota* v. *Probate Court*, 309 U. S. 270, 273, after quoting the State Court's construction of what the statute intended, this Court said (p. 273):

> "This construction is binding upon us. Any contention that the construction is contrary to the terms of the Act is unavailing here. For the purpose of deciding the constitutional questions appellant raises

we must take the statute as though it read precisely as the highest court of the State has interpreted it. *Knights of Pythias* v. *Meyer*, 265 U. S. 30, 32; *Guaranty Trust Co.* v. *Blodgett*, 287 U. S. 509, 513; *Hicklin* v. *Coney*, 290 U. S. 169, 172; *Georgia Railway & Electric Co.* v. *Decatur*, 295 U. S. 165, 170."[6]

SECOND POINT.

K. R. S. §393.110 (as so construed) is void, because:

1. It interferes with the custody, duties, and conduct of National Banks; and it regulates and frustrates the national purposes for which National Banks were created.

2. It trespasses upon the exclusive field of Federal instrumentalities; which trespass, if sustained here, opens the door for unlimited State discretionary power over such Federal instrumentalities.

K. R. S., §393.110 requires all National Banks annually to pay over to the State all deposits which fall within the Act's definition of deposits which "shall be presumed abandoned" (*Cf.* §§393.060, 393.070).[7]

Kentucky asserts that it has that power (without the necessity of any judicial proceedings whatever), because it claims that,

---

[6]To the same effect, see *Storaasli* v. *Minnesota*, 283 U. S. 57, 62; *St. Louis S. W. Ry.* v. *Arkansas*, 235 U. S. 350, 362; *Madden* v. *Kentucky*, 309 U. S. 83, 87, note [3]; *Detroit & Mackinac Ry.* v. *Paper Co.*, 248 U. S. 30, 31; 35 C. J. S. "Federal Courts," §171, p. 1247-1252, notes [23-24], for a wealth of citation of this Court's decisions.

[7]The Kentucky Court of Appeals held that the Act *did not escheat* the deposits (p. 11-12, *supra*).

This holding was necessary, because, if it *were* an Escheat Act, it would be void: (*a*) as violative of long-established rules and prohibitions governing escheats (R. 57; 30 C. J. S., p. 1167-1171); and (*b*) as directly counter to the *San Jose* case (262 U. S. 366).

Therefore, this appeal does not even present the question whether (in *escheat* proceedings against the "owner" of the deposit) the State has the power to declare that the "owner's" deposit "shall be *presumed* abandoned" after ten (or twenty-five) year's dormancy.

(1) It can *legislatively* determine when *National* Banks' deposits "shall be *presumed* abandoned";

(2) "For the benefit and protection of both the depositors and the State," it can compel all *National* Banks to surrender the custody of such deposits to the State, to the end that, thereafter, the State may, or may not, as it pleases, take subsequent independent escheat proceedings against the depositor alone "to establish conclusively that it was actually abandoned" [K. R. S. 393.060; 393.110; 393.230(2)]; and

(3) The State has legislatively *exonerated* the National Banks from any liability to the depositors; or, if that be impossible, the State will "reimburse" such National Banks for any liability to the depositors [K. R. S. 393.103].

The constitutional question involved is simply this:[8]

Can Kentucky compel *National* Banks (under penalty of fine or imprisonment, or both) to pay over to the State the money, which depositors—not merely Kentucky depositors, but depositors from many other States, *Bank of Jasper* v. *First Nat. Bank*, 258 U. S. 112, 119—have voluntarily chosen to leave on deposit in a *National* Bank in Kentucky? —with power in Kentucky (by legislative action) to define[9] *for itself* the conditions under which it will compel the *National* Banks to pay over their deposits to Kentucky?

Stated a little differently: Are the operations of National Banks, their deposits, *and their relations to their depositors*, controlled exclusively by Congressional legislation? Or, are the custody of their assets, and their operations subject to the varying legislative demands of the 48 States?

[8] It is not a question of what Kentucky can do with respect to its own *State* Banks, who owe their very existence, rights and obligations solely to Kentucky. The question here involved relates solely to *National* Banks.

[9] If Kentucky has the constitutional power *to define* the conditions under which it will compel the transfer of National Banks' deposits to the State, no one can control the definition adopted, as that would rest within the legislative discretion of the State.

Hence the constitutional importance of this appeal to *all* National Banks—vastly transcending any question of mere long-dormant deposits.

We insist that Kentucky does not have the power it asserts.

We submit;

I. *National Banks are Federal instrumentalities of the highest order—free from control or regulation by the States—and subject only to such control and regulation as Congress prescribes, or has affirmatively permitted the States to prescribe.*

1. National Banks were created by Congress to do a *private* banking business; backed by *private* capital; for the *private* profit of their stockholders; and subject only to Federal Control—all in order that they might effectively carry out the national purposes for which they were primarily created (*M'Culloch* v. *Maryland*, 4 Wheat. 316, 408, 422; See arguments of Mr. Webster, Attorney General Wirt, and Mr. Pinkney, at p. 325-326, 352-356, 389-396; *Osborn* v. *Bank*, 9 Wheat. 738, 860-864; *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, 208-211).[10]

[10]The numerous authorities cited below show that the First and Second Banks of the United States, and the present National Banking System, were created by Congress to do a *private* banking business, so that by receiving vast private deposits of individuals and corporations, those banks could be, and, for more than 100 years, they have been *actually* and effectively, used as instrumentalities of the Federal Government, in order *inter alia*, (*i*) to enable the Government to wage war, to carry on its fiscal operations, and to obtain loans in anticipation of its revenues; (*ii*) to buy Government Bonds, to receive subscriptions therefor, and to distribute them among public investors, and thereby provide a market for Government Bonds; (*iii*) to facilitate the payment of Federal taxes, and the payment of troops; (*iv*) to collect, safeguard and transport money, to transfer public funds from place to place, with-

[*Note continued on following page*]

2. In the midst of this Great War, the following figures illustrate the vital importance of National Banks, in their capacity of private banking, as *financial instrumentalities* of the Federal Government:

14,775 State *and* National Banks have	$96 billion deposits
9,775 State Banks have *only*	$41 billion deposits
5,000 National Banks have	$55 billion deposits

Of their $55 billion deposits, National Banks have invested over $30 billion thereof in U. S. Government Bonds. That is, they have invested nearly *sixty per cent* (60%) of their total deposits in Government Bonds; and they hold

---

out cost to the Government or loss to it on account of any difference in exchange; and (*c*) to furnish depositaries at convenient places throughout the country for public funds, at a time when every Collector of Federal taxes was afraid to deposit money in State Banks, although responsible for the public funds so collected, and yet had to hold it in his physical, personal possession, subject to the dangers of fire and accident, as the Government did not even furnish an office safe for the safekeeping of money.

BANK OF THE UNITED STATES. *McCulloch* v. *Maryland*, 4 Wheat. 316, 407-409; *Osborn* v. *Bank*, 9 Wheat. 738, 861-864; Beveridge's Life of John Marshall, Vol. 4, pp. 171, 176-195; Holdsworth & Dewey's "First and Second Banks of the United States"; McMaster's History of the People of the United States, Vol. 2, p. 29; *Id.*, Vol. 4, p. 280 *et seq.*; especially pages 300-318; Hamilton's Report on a National Bank; Lincoln's Speech in reply to Douglas, December, 1839, Vol. 1, p. 197-198 of, "Lincoln's Writings," Constitutional Ed.

NATIONAL BANKING SYSTEM. Lincoln's Veto Message of June 23, 1862 (6 Messages and Papers of the Presidents, p. 87, 88); Lincoln's 2nd Annual Message, Dec. 1, 1862 (*Id.*, p. 126, 129-130); Rhodes' History of the United States, Vol. 4, p. 237-239; Noyes' "History of the National Banking Currency," p. 41; Davis' "The Origin of the National Banking System," p. 79, 80, 89, 106, 109; *Veazie Bank* v. *Fenno*, 8 Wall. 533, 536-539, 548; *Farmers &c Nat. Bk.* v. *Dearing*, 91 U. S. 29, 33; *First National Bank* v. *Union Trust Co.*, 244 U. S. 416; *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, 209, 211-213.

nearly *one-third* of all Government Bonds in which they are allowed to invest.

But that is not all:

Practically the *entire balance* of all National Banks' assets is held in (*i*) cash, and (*ii*) loans to *war industries*, in order to finance, and to carry on, the United States' War requirements.

Nothing more need be added to show the vital part which National Banks, as Federal instrumentalities (using private deposits in their private banking business), play in financing the United States Government.[11]

3. National Banks, as Federal instrumentalities, are free from control or regulation by the States (*Easton* v. *Iowa*, 188 U. S. 220, 238; 9 C. J. S., p. 1094, 1255, and cases cited, and reviewed p. 24 *et seq., infra*).

II. *K. R. S. §393.110 is void because it regulates, and interferes with, the duties, the conduct, and the custody of the assets, of National Banks as Federal instrumentalities.*

The very foundation of the banking business is to receive, *and hold* deposits (9 C. J. S. p. 1253). National Banks exercise the Federal power "to carry on the business of banking . . . by receiving deposits . . . dealing in and purchasing for its own account investment securities . . . [without limitation or restriction in the amount purchased of] obligations of the United States" [National Banking Act §24; 12 U. S. C. A. §24, as amended June 11, 1940, c. 301; 54 Stat. 261; 9 C. J. S. 1094].

In carrying out its *private* banking business, in order, not merely to make a private profit for its shareholders,

[11]The deposits in National Banks are not simply those of local individuals and corporations of the particular State in which the National Bank is located, but in large measure (and particularly so in all of the larger banks, which are contributing most to the financing of the War), the depositors are *not* from the particular State in which the bank is located, but are individuals, and especially corporations, from many other States.

but to act as a vital Federal instrumentality, *inter alia*, in the purchase of Government Bonds, it receives deposits of vast numbers of individuals, firms, public and private corporations;—with which private funds it carries on its banking business and largely *finances* the present War.

* * * * * * *

(1) Kentucky declares that National Banks *must surrender to the State* custody of all deposits which the State defines as "presumed abandoned." That Act interferes with the National Banks' custody of the funds which have been deposited with it.

Every dollar of deposit, the custody of which is taken away from the National Banks and vested in the State, reduces, *pro tanto*, the National Banks' ability to buy Government Bonds, or to lend money to borrowers in the prosecution of its Federally authorized business of banking. That certainly *interferes* with the National Bank's conduct of its business. "Dormant" deposits are the very ones that can most safely be invested in U. S. Bonds.

To carry out the mandate of the Kentucky Act, National Banks must, *pro tanto*, reduce their cash on hand, or call loans, or sell securities, to enable them to comply annually with the Act.

But that is not all:

(2) The Act requires National Banks annually to file a public report, giving the name and address of every depositor, and the amount of his deposit which has been inactive for the past ten, or twenty-five years (as the case may be), which report must be posted annually at the court house door in the county where the National Bank is located [K. R. S. 393.110(1)].

That requirement certainly *regulates* National Banks' conduct of their business. It gives public notice to its State Bank *competitors* of the names, addresses, and amounts of deposit, of certain of its depositors. The list of a bank's depositors, with their addresses and amounts of deposit, are a highly valuable and confidential bank

record; because, if made public, (*a*) it makes the bank subject to raids by its public and private banking competitors to obtain the business of such depositors, and (*b*) it deters depositors, both local, and especially from other States, from depositing their funds in a bank which is required to give such public information concerning the depositor's private accounts.

But that is not all:

(3) When National Banks receive deposits, a contractual relation is established between the depositor and the Bank, by which the Bank must, on demand, pay the money to the depositor (*Davis* v. *Elmira Saving Bank*, 161 U. S. 275, 288; 9 C. J. S. p. 544 *et seq.*). That duty is created by the National Banking Act.

Kentucky has undertaken to dissolve that relation between National Banks and a large number of their depositors, (*a*) by compelling the Bank to pay the deposit to the State, instead of to the depositor; and (*b*) by attempting to relieve the Bank of its obligation to repay and to substitute the State in its place against the National Bank's wishes (K. R. S. §393.130). The State is thereby certainly *interfering* with the duties and conduct of the National Banks' operations in their banking business.

The State has no such power over Federal instrumentalities.

But that is not all:

(4) Congress has never dealt with so-called inactive or dormant deposits, nor made any provision for their disposition.

Under the Banking Act; before Congress; and at the bar of the Federal Government; inactive and dormant deposits **stand exactly like the most recent and active deposits.**

Kentucky has dealt with the National Banking System; and made a new classification of the banking business in

the field of keeping, and paying out, deposits. In doing so, Kentucky has assumed *to regulate* the duties and conduct of Federally incorporated banks, regarding inactive and dormant deposits.

Congress has the sole power to regulate and control the operations of National Banks, which are subject to the paramount authority of the United States. Kentucky's attempt to define National Banks' duties, and to control the conduct of their officers in retaining deposits or paying them out, is absolutely void, because Kentucky has attempted to modify and change that which Congress created, *i. e.*, the relation of National Banks to their depositors (9 C. J. S. 1090, 1094, and the wealth of authorities there cited).

But that is not all;

(5) A National Bank's solvency or insolvency might depend upon whether it could quickly recover from the State the amount of the dormant deposits, should the depositors demand payment from the Bank. (See p. 24, 41, 42, *infra.*)

III. *K. R. S. §393.110 is void, because it trespasses upon the exclusive field of Federal instrumentalities; which trespass, if sustained here, opens the door for unlimited State discretionary power over Federal instrumentalities.*

This Court has constantly had to protect Federal agencies and instrumentalities from interference by State legislation—not because the degree of interference, in the particular case, was so great as to be vital *per se*, but because of the *obsta principiis* principle, applied equally against Congressional infringement of individual rights under the Constitution (*Boyd* v. *U. S.*, 116 U. S. 616, 635), and a State's interference with Congressional prerogatives (*First Nat'l Bank* v. *California*, 262 U. S. 366, 370).[12]

[12] This Court has often pointed out the necessity for protecting federal agencies against interference by state legislation. [*Note continued opposite*]

Kentucky asserts the right to make a "transfer of property," from National Banks to itself as custodian (R. 58), upon the ground that:

> (1) "the Act is one pursuant to which mere custody, as distinguished from title, is vested in the State by reason of dormancy" (R. 63);
>
> (2) "The good faith of the Legislature cannot be questioned and it is to be assumed that the Act was for the protection of the depositors as well as for the benefit of the state" (R. 58).

If this Court upholds the transfer to the State Department of Revenue of perhaps hundreds of thousands of dollars on deposit in National Banks (*a*) for the reasons (1) and (2) assigned by the Kentucky Court of Appeals; and (*b*) because of an inability to question the "good faith of the [State] Legislature," let us examine the consequences of that novel ground for dealing with Federal instrumentalities:

1. The Kentucky Legislature was in session in 1933—the year of the bank crisis and universal closing. Suppose it had passed an act reciting that "for the protection of the depositors as well as for the benefit of the State," all National Banks must deposit 25%, or 50%, of the National Bank's assets with the State's Department of Revenue. Would that be an unlawful interference with Federal instrumentalities? or would it be sustained, because the Legislature's "good faith" could not be questioned, and it was acting for the protection of the depositors and for the benefit of the State?

The approved principle of *obsta principiis* should be adhered to. *McCulloch* v. *Maryland*, 4 Wheat. 316; *Osborn* v. *United States Bank*, 9 Wheat. 738; *Farmers' and Mechanics' National Bank* v. *Dearing*, 91 U. S. 29; *California* v. *Central Pacific R. R. Co.*, 127 U. S. 1; *Davis* v. *Elmira Savings Bank*, 161 U. S. 275; *Easton* v. *Iowa*, 188 U. S. 220; *Covington* v. *First National Bank*, 198 U. S. 100; *Farmers and Mechanics Savings Bank* v. *Minnesota*, 232 U. S. 516; *Choctaw, Oklahoma & Gulf R. R. Co.* v. *Harrison*, 235 U. S. 292; *Bank of California* v. *Richardson*, 248 U. S. 476.

The Kentucky Legislature might have thought in "good faith" that, in view of the national scandals centering at that time upon certain New York, Detroit and other large National Banks, the Kentucky depositors would be better protected by having at least a part of their deposits safely in the hands of the State.

2. Or, under substantially the same circumstances assumed in 1, suppose the Legislature attempted to compel National Banks to transfer to the custody of the State *all* of their assets, up to an equality with the amount of their deposit obligations to their depositors.

3. Traditionally, for many years, the Treasury Department [Comptroller of the Currency] insisted that National Banks should have a Capital, Surplus, and Undivided Profits of about 10% of their Deposits—commonly known as the 10 to 1 ratio.

During the last few years, with the enormous War expenditures, necessary expansion of credit, and consequent increase in deposits, many National Banks, of unquestioned solvency and strength, have had their Deposits greatly increased, so that the ratio of Capital, Surplus, and Undivided Profits to Deposits, instead of being limited to 10 to 1, has in many instances arisen to 20 to 1 or 25 to 1, or even to 30 to 1.

Suppose the Kentucky Legislature passed an act reciting and approving the long-established 10 to 1 rule or practice of the Treasury Department, its disregard by countless National Banks; and then compelling all National Banks to transfer the *custody*—though not the title—of so much of their deposits (*i. e.*, assets representing deposits) as would reduce the ratio of each National Bank to (say) 15 to 1.

If the "good faith" of the Legislature, acting for the protection of the depositors and the benefit of the State, is to be the constitutional test of State action with respect

to Federal instrumentalities [as the Court of Appeals relies on in the case at bar, R. 58], what legal argument would exist against the validity of such an Act?

4. Suppose Kentucky passed an act prohibiting any bank, State or National, from receiving deposits in excess of a ratio of 10 to 1 of their Capital, Surplus, and Undivided Profits, on the ground that, for the protection of the depositors and the benefit of the State, the long traditional Treasury Department ratio must be maintained. There is no Congressional legislation on the subject, yet would not that be an *interference* by the State with the Federal instrumentality?

5. Instead of requiring a public posting of all dormant accounts of ten or twenty-five years' standing (as the case might be) suppose Kentucky—adopting the *San Jose* case suggestion (262 U. S. at p. 370)—compelled all banks, State and National, to post at the court house door a list of all deposits dormant for (say) only *three* years.

Or, to go a step further, suppose the Act provided for posting a list of all deposits, *active* or dormant, of *three years'* standing.

6. Suppose the Kentucky Legislature "for the benefit and protection of both the depositors and the State" (R. 58), provided that all banks, State and National, should annually file as a public record a list of all their securities, bonds, notes, loans, or other investments. Such an Act would not interfere with the *custody* of the assets, nor perhaps with the duties or operations of the bank; yet, would it not *interfere* with a Federal instrumentality?—although the full disclosure of all the Bank's assets might be very enlightening to depositors in determining which banks were the safest in which to deposit money.

7. Or suppose Kentucky required all banks annually to post a list of all the bank's loans, if any, to Directors, stockholders, officers, or employes. Such disclosure could

be well defended as desirable, to prevent looting of the banks by those interested in its management, and to afford the public some guidance as to the bank's solvency.

Would the foregoing suppositi'ous State Acts be good or bad?

8. If a National Bank must pay all its dormant deposits to the State, the Bank's cash (available to pay its depositors) is *correspondingly reduced;* and in place thereof it simply has a dubious, unliquidated, unsecured, possible claim against the State, which in times of stress would not be available to pay depositors (p. 41-42, *infra*).

In the Banking Crisis (1932-1933), many depositors checked out long dormant accounts. If those deposits had been previously paid to the State, the Bank's solvency itself might have been destroyed through its inability to sell, or otherwise realize upon, its non-negotiable claim against the State—even assuming (which is very, very doubtful) that it might *ultimately* collect from the State (p. 41-42, *infra*).

Would not such a situation interfere with a National Bank's operation of its banking-deposit business?

This Court must decide what constitutes a State interference with a Federal instrumentality. As a guide on that subject, it would be well to make

A REVIEW OF THE AUTHORITIES.

In *Easton* v. *Iowa*, 188 U. S. 220, 238, this Court held that, as far as *National* Banks were concerned, the State had no power to punish a bank official for accepting a deposit with knowledge of the bank's insolvency; and the principle on which the present appeal is based was thus aptly stated (p. 238):

> "Our conclusions, upon principle and authority, are that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations; . . . that it is not com-

petent for state legislatures to interfere, whether with hostile or friendly intentions, with national banks or their officers in the exercise of the powers bestowed upon them by the general government."

The most important function of every National Bank is to receive deposits, to keep safe custody thereof, and, on demand, to repay them to the depositors.

This Court has repeatedly held (1) that the States have no power to regulate, control, hamper, or interfere with, the free and untrammeled operation of National Banks, as instrumentalities of the Federal Government, in the conduct of their *private banking business;* and (2) that the States cannot interfere with the efficiency of National Banks in discharging their duties as *private* banks, in receiving deposits, maintaining their custody, and ultimately repaying them to the depositors—for which functions National Banks were primarily created in order to be effective Federal instrumentalities (p. 20-21, *supra*).

It is needless to review, or quote from, the multitude of cases on that subject, although some of them are cited in the margin.[13]

---

[13] A multitude of cases are cited in 61 C. J., p. 281 *et seq.*, 371 *et seq.*, notes 92-99.

See also *McCulloch* v. *Maryland*, 4 Wheat. 316; *Osborn* v *United States Bank*, 9 Wheat. 738; *Farmers and Mechanics' National Bank* v. *Dearing*, 91 U. S. 29; *California* v. *Central Pacific R. R. Co.*, 127 U. S. 1; *Davis* v. *Elmira Savings Bank*, 161 U. S. 275; *Easton* v. *Iowa*, 188 U. S. 220; *Covington* v. *First National Bank*, 198 U. S. 100; *Farmers and Mechanics' Savings Bank* v. *Minnesota*, 232 U. S. 516; *Choctaw, Oklahoma & Gulf R. R. Co.* v. *Harrison*, 235 U. S. 292; *Bank of California* v. *Richardson*, 248 U. S. 476; *Lewis* v. *Fidelity Co.*, 292 U. S. 535, 564, 566; *Forrest* v. *Jack*, 294 U. S. 158, 162; *Seabury* v. *Green*, 294 U. S. 165, 169; *Domenech* v. *National City Bank*, 294 U. S. 199, 205; *Des Moines Bank* v. *Fairweather*, 263 U. S. 103, 106, 107; *Old Company's Lehigh* v. *Meeker*, 294 U. S. 227, 230-231; *Jennings* v. *United States Fidelity & Guaranty Co.*, 294 U. S. 216; *Rankin* v. *Barton*, 199 U. S. 228, 231-232; *Christopher* v. *Norrell*, 201 U. S. 216, 225; *First Nat'l Bank* v. *Missouri*, 263 U. S. 640, 656, 662-665; *Fed. Land Bank* v. *Bismarck Co.*, 314 U. S. 95, 102-103; *Standard Oil Co.* v. *Johnson*, 316 U. S. 481, 485; *Maricopa County* v. *Valley Bank*, 318 U. S. 357, 361; *Mayo* v. *United States*, 319 U. S. 441, 445; *Oklahoma Tax Comm'n* v. *United States*, 319 U. S. 598, 603.

Bearing in mind "that the activities of the Federal Government are free from regulation by any state"; and that "it is necessary for uniformity that the laws of the United States be dominant over those of any state" (*Mayo* v. *United States*, 219 U. S. 441, 445), a few pertinent cases will be noticed:

The California National Bank Case.

In *First Nat'l Bank* v. *California*, 262 U. S. 366 (*San Jose* Case), California Statutes provided that the State might sue banks, and their depositors, to recover all twenty-year-old dormant deposits, as escheated to the State; with a provision for an ordinary trial, judicial determination, and judgment; which, if in favor of the State, should command the bank to pay the deposits to the State Treasurer, to be handled as provided by law in the case of other escheated property.

The State sued the First National Bank to escheat one Campbell's $1,192.25 twenty-year-old dormant deposit; and, after trial, judgment was rendered against the Bank, affirmed by the Supreme Court of California (186 Cal. 746).

On writ of error, this Court *reversed* the case, and held that the California Statutes were not applicable to National Banks, saying (p. 368):

> "Section 5136, U. S. Revised Statutes, confers upon national banks power to receive deposits, which necessarily implies the right to accept loans of money, promising to repay upon demand to lender or his order. These banks are instrumentalities of the Federal Government. Their contracts and dealings are subject to the operation of general and undiscriminating state laws which do not conflict with the letter or the general object and purposes of congressional legislation. But any attempt by a State to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation or impairs

the efficiency of the bank to discharge the duties for which it was created. *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, 283, 288, 290.

"National banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. . . . Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Anything beyond this is 'an abuse, because it is the usurpation of power which a single State cannot give.'" *Farmers' and Mechanics' National Bank* v. *Dearing*, 91 U. S. 29, 33, 34.

Congressional legislation in respect of national banks "has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States." *Easton* v. *Iowa*, 188 U. S. 220, 229.

Plainly, no State may prohibit national banks from accepting deposits or **directly impair their efficiency in that regard.** And we think, under circumstances like those here revealed, **a State may not dissolve contracts of deposit even after twenty years and require national banks to pay to it the amounts then due;** the settled principles stated above oppose such power.

Does the statute conflict with the letter or general object and purposes of the legislation by Congress? **Obviously, it attempts to qualify in an unusual way agreements between national banks and their customers long understood to arise when the former receive deposits under their plainly granted powers. If California may thus interfere other States may do likewise; and, instead of twenty years, varying limitations may be prescribed—three years perhaps, or five or ten, or fifteen.** We cannot conclude that Congress intended to permit such results. They seem incompatible with the purpose to establish a system of governmental agencies specifically empowered and expected **freely to**

accept deposits from customers irrespective of domicile with the commonly consequent duties and liabilities. **The depositors of a national bank often live in many different States and countries; and certainly it would not be an immaterial thing if the deposits of all were subject to seizure by the State where the bank happened to be located.** The success of almost all commercial banks depends upon their ability to obtain loans from depositors, and these might well hesitate to subject their funds to possible confiscation.

This Court has often pointed out the necessity for protecting federal agencies against interference by state legislation. The approved principle of *obsta principiis* should be adhered to. [Citation omitted of the ten cases cited at p. 21 note, *supra*]."

That case is directly in point; not because it was an "escheat" case (which is not so in the case at bar, p. 11-12, *supra*), and this Court never even used the word "escheat," or referred to that subject, *in its entire opinion*, but for this more important reason:

If California (having carefully observed all the traditional legal pre-requisites and procedure to enforce an escheat of a twenty-year-old dormant deposit) is forbidden to do so, **because such action would interfere with a National Bank's relation to its depositors**; then, *a fortiori*, Kentucky cannot, by the mere *ipse dixit* of a Legislative Act, compel a National Bank, under heavy penalties, to transfer to the State, ten-year and twenty-five-year-old dormant deposits, *without any legal proceeding against either the bank or the depositor.*

The California State Bank Case is not in point as to a National Bank.

A few months later, in *Security Bank v. California*, 263 U. S. 282, the same situation arose, under the same California Statutes, and by the same procedure, with respect to dormant deposits in a California *State* Bank. The State Courts sustained a judgment, which declared escheat, and

ordered the Bank to pay over the deposit to the State. The State Bank claimed that the Statutes denied it due process of law. (See p. 39-40, *infra*.)

This Court reiterated (p. 284, note [2]):

> "That the statutes are invalid as applied to *national* banks was settled in *First National Bank* v. *California*, 262 U. S. 366."

Therefore, the *Security Bank* case has no application to the *National* Bank here; and it is not in point in considering whether the California or Kentucky Statute interferes with a *National* Bank as a Federal instrumentality—unless this Court wishes to *overrule First Nat'l Bank* v. *California*, 262 U. S. 366, which the Kentucky Attorney General and three *Amicus Curiae* Briefs [Minnesota, Wisconsin, Michigan, and California] strongly urge it should do.[14]

In view of this Court's re-affirmance[15] of that case, and its wide acceptance by State and Federal Courts (See Shepard's United States Citations, 1943 Ed., p. 2662; October Issue, p. 145; November Issue, p. 14), we see no reason now to submit any argument to sustain this Court's decision. We are entitled to rely on what this Court has decided.

Other cases directly in point.

In *National City Bank* v. *Philippine Islands*, 302 U. S. 651, the judgment was reversed upon the re-affirmed authority of *First National Bank* v. *California*, 262 U. S. 366.

In *American Nat. Bank* v. *Clarke*, 175 Tenn. 480, a Tennessee Statute (substantially similar to the Kentucky Statute) provided that deposits of fifteen or twenty-five years' dormancy "shall be deemed to be abandoned property and shall be turned over to the State of Tennessee," with a

[14] Kentucky Attorney General's Brief, p. 55; and *Amicus Curiae* Briefs: For Minnesota and Wisconsin, p. 2-3, 14-15; For California, p. 5, 12; For Michigan, p. 20.

[15] *Security Bank* v. *California*, 263 U. S. at p. 284; *National City Bank* v. *Philippine Islands*, 302 U. S. 651; *Colorado Bank* v. *Bedford*, 310 U. S. at p. 50, note [24].

public report of the names and addresses of the depositors, and the amounts of such dormant deposits.

As in the case at bar, *there was no provision for legal proceedings to escheat*, or to test the title of the deposits, *before* requiring the bank to pay over the deposits to the State.

The Supreme Court of Tennessee held that the Tennessee Statute *was void* as applied to *National* Banks, saying:

> "Among other powers conferred by the Congress upon national banks is the right to receive deposits of money. **Without the free exercise of this right, as regulated by Federal legislation, the banks could not survive. Hence, it can be readily seen that any state law which interferes with this right is in conflict with the laws of the United States, and therefore, void.**
>
> The Act here in question is not an escheat statute, but is one where the state has undertaken to say that funds to the credit of a depositor in a "banking institution" (including a national bank), where the account has remained inactive for fifteen successive years, or for the period of twenty five years in the case of savings funds and time deposits, "shall be deemed to be abandoned property and shall be turned over to the State," *without any judicial proceeding brought against the bank, or the depositor*, to have the funds declared abandoned property. . . . But, as above stated, the Act there in question is not an escheat law. It merely requires that a bank turn over to the State the funds to the credit of a depositor, when his account had remained inactive for a term of years."

The Court quoted at length from *First Nat'l Bank* v. *California*, 262 U. S. 366; denied that its authority had been impaired by any subsequent decisions; and aptly pointed out the difference between escheat statutes, or the transfer of deposits, (*a*) in the case of *National* Banks, and (*b*) in the case of *State* Banks.

In *Starr* v. *O'Connor*, 118 F. (2d) 548 (C. C. A. 6th; cert. den. 314 U. S. 695), the Court dealt fully with the Michigan Escheat Statutes (as applied to the Receiver of the First National Bank) which provided that Michigan should receive by escheat all dormant deposits in failed banks; and that the Bank's Receiver should "transfer all such escheated deposits" to the State.

The C. C. A. carefully considered the Supreme Court of Michigan's declaration "that escheat proceedings under Michigan laws are not solely for the benefit of the state, but are also designed for the conservation by the state of the property possessed for the benefit of any person lawfully entitled subsequently to receive it"—substantially the same declaration that the Court of Appeals of Kentucky made in the case at bar (R. 58).

After quoting at length from the *San Jose* case (262 U. S. 369, 370), the C. C. A. held that it was "direct and controlling," and that the Michigan Statute "constitutes an *unlawful interference* with the liquidation of a national bank."

The same result may be reached from another approach to the subject.

In *Smith* v. *Kansas City Title Co.*, 255 U. S. 180 (on argument and re-argument), and *Federal Land Bank* v. *Bismarck Co.*, 314 U. S. 95, it was held that Federal Land Banks were constitutionally created; and that farm mortgages and mortgage bonds, and even purchases of materials for improving bank property, were exempt from State taxation, because the Federal Land Banks were Federal instrumentalities.

The important thing about those decisions is that, at the time of the decision in the *Kansas City Title* case, the Land Banks had never accepted any deposits, nor engaged in any banking business, nor performed any duties as depositaries of public money. Indeed they had never *done*

anything as an instrumentality of the Federal Government. Nevertheless, this Court held that the mere naked *existence* of Federal Land Banks, *with the power* to become a Federal instrumentality if the Government chose so to use it, was enough to make them Federal instrumentalities; and that the States could not tax even the ordinary mortgage, or mortgage bond, which a farmer might execute for the purpose of borrowing money from a Land Bank.

This Court said (p. 213):

> "If the States can tax these bonds they may destroy the means provided for obtaining the necessary funds for the future operation of the Banks."

Federal Land Banks and Joint Stock Land Banks combined have bought only a comparatively *small* amount of Government Bonds, averaging perhaps $50,000,000. Otherwise they have never acted as Federal instrumentalities. They merely had the naked potential *power* to do so; and yet *billions* of dollars of farm mortgage bonds have been completely *exempt* from all State taxation, merely because such Banks are *potential* Federal instrumentalities.

If, then, a Federal instrumentality may be made completely exempt from State taxation, is it not obvious that National Banks, who every day are acting as *actual* Federal instrumentalities, to the extent, in one phase only, of purchasing *thirty billions of dollars* of Government Bonds (or nearly a third of the entire available market) should certainly have their deposits *protected from raiding by the States?*

* * * * *

The National Banking Act created National Banks; authorized them to do a banking business by receiving deposits, and dealing therewith in the usual way that bankers have always dealt with deposits. No matter how long deposits may be dormant, the States have no right, even by the most technical escheat proceedings, to take those deposits away from *National* Banks.

The Kentucky Statute, which baldly orders National Banks to transfer their dormant accounts to the State (under heavy penalties for failure to do so), *interferes* a great deal more with National Banks, than the California, Michigan and Tennessee escheat laws did.

Whether a State (by escheat statute) seeks to obtain both possession *and* title to deposits (California and Michigan statutes), or, by the Kentucky and Tennessee Acts, *compels* a transfer of the custody (even without the title) to the State, the result is the same. They both *interfere* with National Banks' conduct of their deposits, as authorized by Congress; and with which the States have no right to interfere. The text-writers have reached the same conclusion (9 C. J. S., "Banks and Banking," p. 1255; 7 Am. Jur., Banks and Banking," p. 291).

Congress has never legislated respecting so-called dormant accounts. This meant that National Banks may retain deposits as long as a depositor desires to leave it in bank. That is inconsistent with the Kentucky theory that every owner who leaves his deposit dormant for ten or twenty-five years (as the case may be) has "presumably abandoned" it; and the State has the right to take it.[18]

If the States have power to remove the so-called dormant deposits from the National Banks, they may, by their own further extension of that power, destroy the power of National Banks to receive and keep deposits; and thereby prevent them from obtaining the necessary funds for the future operation of National Banks.

---

[18] Of course, National Banks are subject to the application of ordinary *legal proceedings* determining the disposition of deposits upon the death of the depositor, or even his presumed death under State Statutes; but, in such cases, the proceedings must be the *ordinary judicial proceedings*, with the State, the bank, the personal representative or administrator of the depositor, and his heirs—all before the Court.

When a court, State or Federal, of competent jurisdiction, with the necessary parties before it, decrees the ownership of the deposit, then the bank will, and must, pay the deposit to the person thus "duly authorized" to receive it.

But that rule does not apply to a *Legislative* Act.

Opinion of the Kentucky Court of Appeals.

The Court of Appeals held that the *San Jose* case (262 U. S. 366) was not controlling, on the ground that the California Statutes were "statutes of *escheat* or confiscation," and thus tended "to frustrate the purposes and objects of national legislation with respect to such banks" (R. 62); *whereas*, it decided that the Kentucky Act "does *not* provide for an escheat of deposits by reason of mere dormancy, as did the California Statutes," but "vested in the State mere *custody* as distinguished from title" (R. 63); and hence had no tendency to cause depositors to hesitate to make deposits in national banks (*Id.*).

We reply:

This Court did not decide the *San Jose* case with reference to any "escheat" question (p. 28, *supra*) but solely as an interference with a Federal Instrumentality.

We are not here concerned with the rights and remedies of the California *depositors*, as compared with the Kentucky *depositors*. It is not merely a question whether the Act will cause *depositors* to hesitate to deposit their money in national banks. The point is that the Act takes away the *assets and business* of *National* Banks.

The National Bank must surrender to the State so much of its assets as equals the dormant deposit; and whether that transfer of property from the National Bank to the State is an *escheat*, or is a mere *vesting of custody* (as distinguished from title) makes no difference, so far as the condition of the National Bank is concerned. In each instance, it is deprived of the deposit and must pay the money to the State. The rights of the National Bank, and the effect upon the Bank, are the same in Kentucky as in California—in each instance an interference with a Federal instrumentality.

The Court of Appeals refused to follow the Supreme Court of Tennessee, or the Circuit Court of Appeals (6th),

p. 8, *supra*, because it thought those Courts *failed to understand* the ground of the *San Jose* decision (R. 63).

It remains for this Court to apply the principles controlling the *San Jose* case, the Tennessee case, and the Sixth Circuit case, to the *far more objectionable* Kentucky Act—and reach such conclusion as it deems proper.

THIRD POINT.

The Kentucky Act (K.R.S. §393.110), if enforced, will deprive both the State and National Banks of their property "without due process of law."

The petitioner, Anderson National Bank, is not asserting, relying upon, or fighting for, the rights of its depositors,[17] nor is it concerned with whether its depositors are denied due process, "*except in so far as its rights are involved in those of the depositor*" (*Provident Savings Institution* v. *Malone*, 221 U. S. at p. 663). This exception is necessary, because a depositor (if unlawfully deprived of his deposit) may have a right of action *against* the Bank to recover the deposit, even though the Bank may have been previously compelled to surrender its money to the State, on which the Bank had relied to pay the depositor. (*Security Bank* v. *California*, 263 U. S. at p. 286).

The Bank is concerned only with the Statute's effect upon the property of State and National Banks.

I. If compelled (under heavy penalties) to surrender its dormant deposits to the State, *merely because the Act says so*, all Banks—State and National—are thereby deprived of their property "without due process of law." The mere fact that it is a *Legislative Act* which requires them to surrender their property does not constitute "due process."

If K. R. S. §393.110 automatically constitutes "due process," suppose the next Kentucky Legislature, instead

[17] See p. 5 note 2 34, *supra*; *Security Bank* v. *California*, 263 U. S. at p. 286, 290.

of confining its activities to dormant accounts, should enact that all Banks should pay over to the State, and keep in its hands, 50% of the Bank's assets applicable to the payment of its deposits. Would that be "due process"?

Or, suppose the Act provided that the State should *take custody* (*i. e.*, possession) of uncultivated farm lands, and unimproved city property, but *without taking title* thereto. That Act would certainly lack "due process," even if the owner were given the right to get his property back upon cultivating or improving it. A wrongful taking of property is never justified by permitting the owner to recover it later. A thief must surrender custody, if he is caught, and his willingness then to surrender the property does not justify the original taking. The test of "due process" is not whether the property can be *recovered*, but whether it was *rightfully taken* in the first place.

Any wrongful taking results in a duty to return that which was so taken. It is arguing in a circle to say that because there is a duty to return, the wrongful taking is excusable.

The Kentucky Act is in the nature of a "Bill of Pains and Penalties," in that it *confiscates* by Legislative enactment the property of all Banks; nor is it any less a *confiscation* because the Act unsuccessfully (p. 41-42, *infra*) attempts to *relieve* the Banks from liability to their depositors, or to "reimburse" the Banks if such relief is impossible.

In short, if, by a mere Legislative Act, States can *transfer* the custody of citizens' property to the State, upon the excuse that *title* is not transferred, all effective property protection is gone.

II. The States of Kentucky, Minnesota, Wisconsin, Michigan and California insist that the Kentucky Act does not deprive any of the Banks (State or National) of their property "without due process of law." They rely upon

(*i*) several State Court decisions[18] and (*ii*) this Court's decisions in *Provident Savings Institution* v. *Malone*, 221 U. S. 660, and *Security Bank* v. *California*, 263 U. S. 282.

In the *Provident Savings Institution* case, the Massachusetts Attorney General sued the Bank, alleging that the depositors *could not be found*, and that no claimants to the deposits were known. The Bank was *served with process*. A citation, addressed to the depositors, was published weekly for three weeks in two Boston newspapers.

---

[18]See Kentucky's BRIEF, p. 19-41; *Amicus Curiae* BRIEFS: Minnesota p. 8-9; Michigan, p. 3, 4, 24; California, p. 2.

The State Court cases are easily disposed of:

(1) As to *National* Banks, they are inapplicable because they deal exclusively with the power of States over their own *domestic* corporations.

(2) As to State Banks, they are, for a variety of reasons, inapplicable:

In *Brooklyn Borough Gas Co.* v. *Bennett*, 277 N. Y. S. 203, 154 Misc. 106, a New York Act required public utilities to file with the Public Service Commission a report of all ten-year dormant consumer deposits; and to pay into the State Treasury all fifteen-year dormant consumer deposits, with a provision for an ultimate refund to the consumer if called for.

A public utility sued to enjoin the enforcement of the Act. A single trial judge denied the injunction, upon the authority of *Provident Savings Institution* v. *Malone*, 221 U. S. 660; but pointed out that the utility was entitled, to a judicial hearing *before* it could be compelled to turn over the deposits to the State, saying (p. 216-217):

> "In so far as the utility is concerned, none of these deposits can be taken from its possession without due notice and an opportunity for it to be heard. As a matter of fact the proceedings are initiated by the utility itself by the filing of the report with the Commission. In so far as a hearing is concerned, the utility itself is the arbiter as to what particular deposits are to be reported, so that the necessity of a formal hearing does not arise. If the report of the utility is unsatisfactory to the state, there is ample provision in the Public Service Law to compel compliance with the statute, and in this connection the orders of the Commission can be reviewed by the court, so that in all these respects due process is secured. Public Service Law, § § 11, 22 and 66; *Matter of New York Cent. R. Co.* v. *Public Service Commission of State of New*

[*Note continued on following page*]

The Bank answered and admitted the allegations of the petition; but it attempted to defend on the ground that the *depositors* were deprived of their property without "due process of law."

This Court held that the Act required *general proceedings* to be instituted in the Probate Court; with personal notice to the Bank; with usual citation and notice to the depositor, if livnig, and to his heirs, if dead; with opportunnity to appear and defend—which procedure was sufficient to keep the Statute from violating the Federal Constitution.

York, 238 N. Y. 132. **There must also be due process in so far as the depositor is concerned, for if the law is not valid as to such depositor it will furnish no protection to the utility when it parts with the deposit.** *Louisville & Nashville R. Co.* v. *Deer*, 200 U. S. 176; *Security Savings Bank* v. *California, supra.*

[After an historical review of property seizures]: Such practices indicate that seizure standing alone has never been regarded as due process, under the procedure of civil law as administered in England at the time we inherited it [Citations omitted]."

There was no appeal, as the Statute was changed.

The Kentucky Act takes possession *before* any judicial hearing.

In *Commonwealth* v. *Dollar Savings Bank*, 259 Pa. 138, all the dormant deposits were made *after* the passage of a statute which required 30-year old dormant deposits to be paid to the State. Pennsylvania sued the Bank to compel the payment of such deposits to the State. The Court held that the statute was "not an escheat act"; and that all the deposits were subsequent to, and hence subject to the terms of the statute.

In *State* v. *Security Savings Bank*, 186 Cal. 419, there were *full judicial proceedings* to enforce a statute requiring 20-year old dormant deposits to be paid to the State. Personal service was made on the Bank. The depositors were served by adequate constructive service of process, and a final judgment was entered compelling the payment to the State (affirmed in *Security Bank* v. *California*, 263 U. S. 282).

In *Braun* v. *McPherson*, 277 Mich. 396, by a four to three decision, it was held (1) that an official administrator of escheated estates, consisting of dormant deposits in an insolvent bank, might *maintain an action* to compel the receiver to pay the dividends on the deposits to such official administrator; and (2) that the depositors' failure to prove their claims against the bank's receiver, prevented the receiver from relying upon the depositors' forfeited rights.

That case is inapplicable here, because (1) Of the *difference* between the Massachusetts and Kentucky Statutes, the latter seizing the deposit even if the depositor is known, *whereas*, the Massachusetts Statute only applied "where the owner cannot be found"; (2) No judicial proceedings of any kind are required in Kentucky; and (3) No opportunity is afforded in Kentucky to either the Bank, or to its depositors, to assert (*before* the payment is made to the State) any *judicial defense* to the Act's peremptory requirement that the Bank must pay the deposits to the State.

In *Security Bank* v. *California*, 263 U. S. 282, the State of California sued both the Bank and certain depositors to compel the Bank to deposit with the State $7,425.16 alleged twenty-year-old dormant deposits of such defendant-depositors. The Bank was served personally, and defended. The depositors were served by publication but none of them entered their appearance. The State Court entered judgment in favor of the State, and the Bank appealed. This Court held (1) That the California statute did not "effect an immediate escheat," but only provided for the State taking over the deposit *after judicial proceedings*, wherein the Bank was served personally and defended, and the depositors were served by publication; and that the statutory service was reasonable; (2) That all the judicial proceedings were in accordance with the usual California Civil Procedure; (3) That the judicial proceedings, the notice, and the opportunity to defend were sufficient; and (4) That the proceeding was not one *in personam* as to the depositors, and hence personal service on them was unnecessary; and (5) That whether the proceeding was *in rem* or *quasi in rem* was immaterial, as in either event the essential requirements were satisfied by the California procedure.

This Court thus stated the Security Bank's due process defense[13] (p. 286):

[13] As foreshadowed in the *Provident Savings Institution* case, 221 U. S. at p. 63; *Cf.*, p. 35, *supra*.

> "The bank's main contention is that it is denied due process because, owing to defects in the prescribed procedure, depositors will not be bound by the judgment; and, hence, that payment to the State will not discharge the bank from its liability to them."

The Security Bank's "due process" contention was overruled, because this Court held there were *no defects* in the prescribed procedure; that the depositors *would be bound* by the judgment; and that the bank's payment to the State *discharged the bank* from liability to the depositors (p. 286, 288 and cases there cited).

None of those conditions exist here: (1) There is no *judicial procedure* whatever, but a mere seizure; (2) The depositors are not bound by any judgment, because no judgment is rendered; and (3) The Bank's enforced payment to the State *will not discharge* the Bank's liability to its depositors.

The *Security Bank* case is no authority in support of the validity of the Kentucky Act; and this so because the California Act provided for *full judicial proceedings*, with personal and valid constructive *service of process*, and a final judgment, *before* the Bank had to pay the money to the State; *whereas*, the Kentucky Act *makes no provision* for (*i*) any judicial proceeding, or (*ii*) any personal service, or constructive service, of process in any kind of a judicial proceeding, or (*iii*) any judgment *before* the Bank is compelled to pay the money to the State.

III. The Attorney General of Kentucky suggests (BRIEF, p. 7, 40) that K. R. S., §393.130 (p. 5, *supra*) (1) *relieves* the Bank of any liability to its depositors; and (2) provides that the State shall *reimburse* the Bank, if the Bank cannot be relieved of its liability to the depositor; and, therefore, that "the Act does not deny due process of law" (BRIEF, p. 19).

That argument must be promptly rejected.

1. A mere Legislative Act cannot relieve the Banks of their contractual liability to their depositors, in the absence of judicial proceedings, to which the Bank and the depositors must be parties by personal or constructive service of process, and a judgment therein relieving the Bank. This is obviously so, because a State cannot relieve any of its citizens of the debts they owe.

The depositors might at any time draw checks against their accounts in the Bank; and if the Bank dishonored the checks, it would be liable in damages to the depositors for such dishonoring[20]--especially so in the case of Savings Deposits, where the Banks owe, not only the face of the deposits, but all the *accumulated interest;* and the State has made no provision to pay such interest.

Even the Kentucky Legislature recognized the absurdity of attempting *legislatively* to relieve the Banks of the obligation of their deposit contracts; for it provided that the State would "reimburse" the Bank, if it could not be constitutionally relieved of its obligation to its depositors.

2. The provision that "the State shall reimburse" the Bank does not give the Bank any protection whatever.

(*a*) The Act does not confer upon the Banks any power to sue the State; nor does the State waive its immunity to suit.

(*b*) The Kentucky Constitution, §230, provides that:

> "No money shall be drawn from the state treasury, except in pursuance of appropriations made by law."

For "reimbursement" the Banks will be wholly dependent upon the vote of future Legislatures to make the neces-

[20]The depositors will not go through the long, cumbersome process of trying to recover from the State, when they have ready at hand a valid remedy against the Bank, either (*i*) to have the checks paid, or (*ii*) to sue the Bank for breach of contract for not paying the checks.

sary appropriations to pay the Banks—a "far cry" from "reimbursement"; and a most flimsy asset for a Bank!

(*c*) Kentucky Constitution, §49, provides that the State's debt "shall not at any time exceed $500,000; *except*, when authorized by a vote of the people at a general election (Ky. Const., §50).

$500,000 is a very small authorized debt limit. If the State's other indebtedness, *plus* its reimbursement debt to the Banks or to the depositors, exceeded that amount, there would be no way for the Banks to be reimbursed, except by a vote of the people at a general election.

Consequently (if the State's total indebtedness exceeded $500,000), no matter how willing the Legislature might be to reimburse the Banks, it could only do so after an authorization by a general election.

If this Court upholds the Kentucky Act, the National Banks and the State Banks will *owe* to their depositors the *full amount* of the dormant deposits, even *after* the Banks have paid the money to the State; but the Banks' cash assets will be correspondingly reduced. In place of cash, they will have these nebulous, questionable, non-negotiable claims against the State, the collection of which will have to depend upon future appropriations by the Legislature, and possibly by general elections by the people.

Does not the Kentucky Act, if enforced, take away from the State and National Banks their property "without due process of law"?

FOURTH POINT.

Response to the various Briefs filed in support of Kentucky's position.

The Briefs of the Attorney General of Kentucky, and the Briefs *Amicus Curiae* of the Attorney Generals of Minnesota, Wisconsin, Michigan, and California, insist as follows:

First: That *First National Bank* v. *California*, 262 U. S. 366, should be overruled for alleged inconsistency with the decisions cited in the margin.[21]

We reply:

First National Bank v. *California* involved interference with a *National* Bank, as a Federal instrumentality. All the alleged conflicting cases[21] related to the power of a *State* over a *State* Bank. The difference is so obvious that argument is unnecessary.

Second: That the Escheat Act must be upheld because a number of cases have sustained Escheat Acts against State Banks, and, hence, the same rule should apply to a *National* Bank (Briefs: Attorney General of Kentucky, p. 19, 23; California, p. 6-8; Michigan, p. 14; Minnesota and Wisconsin, p. 8-9).

We reply;

1. The *difference* between the power of a State over *escheating* deposits in *State* Banks, and the power of a State *summarily to seize* a National Bank's property is too obvious for further argument.

---

[21] Briefs: Kentucky, p. 55; Minnesota and Wisconsin, p. 2-15; Michigan, p. 20; California, p. 2, 12:

Provident Savings Institution v. *Malone*, 221 U. S. 660; *Security Bank* v. *California*, 263 U. S. 282; *Brooklyn Borough Gas Co.* v. *Bennett*, 277 N. Y. S. 203; *Commonwealth* v. *Dollar Savings Bank*, 259 Pa. 138; *State* v. *Security Savings Bank*, 154 Pac. 1070; *Braun* v. *McPherson*, 277 Mich. 396.

2. In every case where the State has succeeded in compelling a Bank to pay dormant deposits to the State, there was first (before such payment could be compelled) a judicial proceeding, with personal service of process, or adequate constructive service of process, against the Bank and its depositors, pursuant to the State's general procedure; and a final judgment entered. No similar procedure is provided in the Kentucky Act; but the Bank must pay the money to the State and look to subsequent litigation for its protection.

CONCLUSION.

The Kentucky Court of Appeals should be reversed and K.R.S. §§393.110, 393.230, 393.290, 393.990 declared unconstitutional as to both State and National Banks.

WM. MARSHALL BULLITT,
Counsel for Appellant.

BULLITT & MIDDLETON,
Of Counsel.

January 18, 1944.

[See Appendix, p. 45, *infra*, for all the Statutes involved.]